

INTERNAL REVENUE SERVICE
DISTRICT DIRECTOR
2 CUPANIA CIRCLE
MONTEREY PARK, CA 91755-7431

DEPARTMENT OF THE TREASURY

DATE: MAR 11 1997

Employer Identification Number:

Case Number:

Person to Contact:

Telephone Number:

Refer Reply To:

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Based on the information submitted, we have concluded that you do not qualify for exemption under that section.

FACTS:

Per the 1023 Application, your organization was formed in [REDACTED]. You submitted a document entitled "Articles of Organization" that was neither signed nor dated. Per the "Articles of Organization", you were organized exclusively "to carry out the great commission of Jesus Christ, Our Lord and Savior to 'go into all the world and preach the gospel. ...'" You requested classification as a church under sections 509(a)(1) and 170(b)(1)(A)(i) of the Code. You stated that there are five active members currently enrolled in the church and that the average attendance at worship services is five. The five active members comprising your "family Christian ministry" appear to be Pastor [REDACTED], his wife, [REDACTED] and [REDACTED] and [REDACTED].

You currently have no regular place of worship. Prayer services and Bible studies are currently being held in Pastor Jones' home. You stated that your governing body is comprised of "pastor, associate ministers, mother's board, deacons/wives, ushers." The names and addresses of the individuals constituting your Board were not listed in the 1023 Application. Furthermore, you stated that "at this time, we have no board. We are governed by God, the word of God, the Holy Spirit, and the pastor of the flock." As previously stated, you did not submit any organizing document that was adopted by at least two individuals. In addition, you failed to submit any organizing instrument or formal amendment thereto which included a proper purpose, power limiting, and dissolution clause.

LAW:

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for religious, educational, charitable or other exempt purposes, no part of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a) of the Income Tax Regulations provides that, in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated for one or more of the purposes specified in that section. If an organization fails to meet either the organizational or

CODE	INITIATOR	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
SUR-NAME	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
DATE	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

DEPARTMENT OF THE TREASURY—INTERNAL REVENUE SERVICE

CORRESPONDENCE APPROVAL AND CLEARANCE

FORM 1937-A (9-1-1)

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operational test, it is not exempt.

To qualify for exemption, the organization must be a corporation, community chest, fund or foundation. Under IRC 7701(a)(3) the term "corporation" includes associations. Thus, the typical nonprofit association formed under a constitution or bylaws, with elective officers empowered to act for it, is treated as a corporation for purposes of IRC 501(c)(3).

Where the purported organizing instrument is in the form of a constitution or articles of association, there should be some evidence that it was signed by people who thereby associated themselves under its terms since an association cannot be formed by a single individual, nor can articles of association be promulgated by the act of one individual.

To meet the organizational test, an organization must establish on the basis of its articles that it was organized exclusively for one or more exempt purposes, without reference to its operations.

Reg. 1.501(c)(3)-1(b)(1)(i) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit its purposes to one or more exempt purposes and do not expressly empower it to engage, otherwise than as an insubstantial part, in activities which in themselves are not in furtherance of one or more exempt purposes.

An organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets are dedicated to an exempt purpose if, for example, upon dissolution, the assets would, by reason of a provision in the organization's articles, be distributed for one or more exempt purposes, or to the federal government for a public purpose.

Pursuant to Reg. 1.501(c)(3)-1(b)(2), the term "articles" means "the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created." Accordingly, the organizational test cannot be met by reference to any document that is not the creating document. In the case of an unincorporated association, the test must be met by the basic creating document and the amendments thereto, whatever that instrument may be called. Subsidiary documents that are not amendments to the creating document may not be called on.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

The term "church" is not specifically defined in the Internal Revenue Code. However, the Internal Revenue Service has formulated certain criteria that are used to determine whether or not an organization qualifies as a "church." The position of the Internal Revenue Service is that, to be a "church" for tax purposes, the organization must satisfy at least some of the following criteria: (1) a distinct legal existence; (2) a recognized creed and form of worship; (3) a definite and distinct ecclesiastical government; (4) a formal code of doctrine

and discipline; (5) a distinct religious history; (6) a membership not associated with any other church or denomination; (7) an organization of ordained ministers; (8) ordained ministers selected after completing prescribed courses of study; (9) a literature of its own; (10) established places of worship; (11) regular congregations; (12) regular religious services; (13) Sunday schools for the religious instruction of the young; (14) schools for the preparations of its ministers.

In American Guidance Foundation, Inc. v. United States, 490 F. Supp. 304 (D.D.C., 1980), an IRC 501(c)(3) religious organization sought classification as a church. Throughout its existence, the organization's membership had consisted of a married couple acting as ministers, and members of their immediate family. The organization prepared documentation that would ostensibly satisfy most of the fourteen criteria looked to by the Internal Revenue Service. The founder ministered to this congregation through worship services conducted in his apartment. Recorded religious messages were distributed by the couple's answering machine, and each week their son was coached by his father in what was claimed to be a Sunday school. The court concluded that a married couple praying together in the physical solitude of their home did not constitute a "congregation" within the ordinary meaning of the word, and that the organization had made no real effort to convert others or to extend its membership beyond the immediate family of the founder. Also, the organization's use of recorded religious messages on tape "hardly qualifies as dissemination of a creed or doctrine." In short, the organization was engaged in a private religious enterprise, and therefore could not fulfill the associational role normally associated with the term "church."

In holding that this organization was not a "church" the court stated:

"While some of these [fourteen criteria] are relatively minor, others, for example, the existence of an established congregation served by an organized ministry, the provision of regular religious services and religious education for the young, and the dissemination of a doctrinal code, are of central importance. The means by which an avowedly religious purpose is accomplished separate a 'church' from other forms of religious enterprise. ... At a minimum a church includes a body of believers or communicants that assembles regularly in order to worship. Unless the organization is reasonably available to the public in its conduct of worship, its educational instruction, and its promulgation of doctrine, it cannot fulfill this associational role. ... It is not enough that a corporation believes and declares itself to be a church. Nor is it sufficient that the applicant prepares superficially responsive documentation for each of the established IRS criteria. To hold otherwise would encourage sham representations to the IRS and result in adverse tax consequences to the public at large. In this instance, AGF [American Guidance Foundation] does not employ recognized, accessible channels of instruction and worship. There is little if any evidence that it seeks to reach or serve a congregation. Private religious beliefs, practiced in the solitude of a family living room, cannot transform a man's home into a church."

ANALYSIS AND CONCLUSION:

To qualify for exemption under section 501(c)(3) of the Code, an organization must be both organized and operated for one or more of the purposes specified in that section. Based on the information submitted, your organization fails to meet the organizational test. You have not submitted any organizing instrument that was dated and signed by two individuals. Because no "adopted" organizing instrument was submitted, you have not even shown that any association exists. Furthermore, you have not submitted any document that shows that you are organized exclusively for one or more exempt purposes under IRC 501(c)(3). There is no organizing instrument or amendment thereto which contains a proper purpose, power limiting, and dissolution clause.

In addition, your organization does not meet the operational test. Your organization's activities are strikingly similar to those of the organization in American Guidance Foundation, Inc.. Your "family Christian ministry" consists of a Pastor, his wife and their immediate family. Bible studies and worship services are held in the Pastor's home. Little if any evidence was produced to show that your organization has made any real effort to convert others or to extend your membership beyond that of your immediate family. Your 1023 Application states that your organization was formed in [REDACTED] and yet you still only have a membership comprised of your immediate family. You do not possess a body of believers who assemble on a regular basis at an established place of worship. You are not reasonably available to the public in your conduct of worship, your educational instruction, and the promulgation of your doctrine. You do not, therefore, meet the requirements of a "church" as set forth in American Guidance Foundation, Inc..

Accordingly, we rule that you do not qualify for exemption under section 501(c)(3) of the Code.

Contributions to you are not deductible under section 170 of the Code.

You are required to file Federal income tax returns on Form 1120.

If you are in agreement with this proposed determination, we request that you sign and return the enclosed Form 6018. Please note the instructions for signing on the reverse side of this form.

If you are not in agreement with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information to support your position, as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a hearing. The hearing may be held at the office of Regional Director of Appeals or, if you request, at a mutually convenient District office.

If we do not hear from you within 30 days from the date of this letter, and you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies and will then become our final determination.

Section 7428(b)(2) of the Internal Revenue Code provides in part that,
"A declaratory judgement or decree under this section shall not be issued in
any proceeding unless the Tax Court, the Claims Court, or the District Court
of the United States for the District of Columbia determines that the organization
involved has exhausted administrative remedies available to it within the
Internal Revenue Service."

Sincerely yours,

District Director

Enclosures: Form 6018
Publication 892